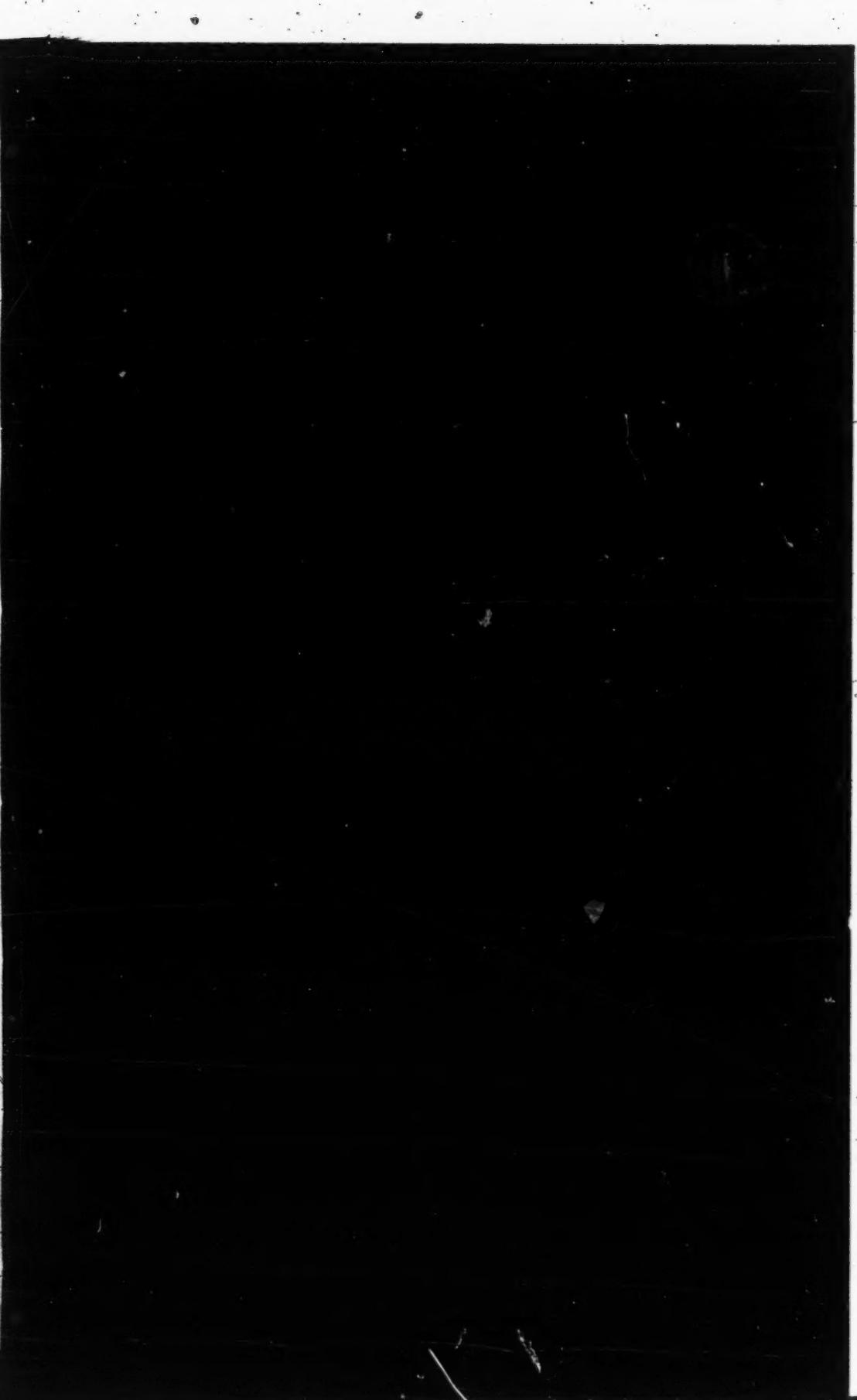


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# INDEX

	Page
Motion to Dismiss Bill of Complaint-----	1
Memorandum in Support of Motion to Dismiss-----	4
State of the Pleadings-----	4
Suggestion as to Defendant Dailey-----	4
Statement-----	4
Argument-----	5
I. Defendants' Citizenship Affords no Basis for the Jurisdiction of this Court-----	5
II. This Suit is Prohibited by Section 3224 of the Revised Statutes-----	7
III. The Issues Presented by Complainant Have Clearly Been Decided Against it by Previous Decisions of this Court-----	9
Answer to Bill of Complaint-----	10

## CITATIONS

Cases:	
<i>Allen v. Regents</i> , 304 U. S. 439-----	7, 9
<i>Georgia v. Morgenthau</i> , No. 16, Original, October Term, 1935-----	4
<i>Helvering v. Davis</i> , 301 U. S. 619-----	9
<i>Helvering v. Gerhardt</i> , 304 U. S. 405-----	9
<i>Kansas v. United States</i> , 204 U. S. 331-----	4
<i>Louisiana v. Texas</i> , 176 U. S. 1-----	4
<i>Minnesota v. Hitchcock</i> , 185 U. S. 373-----	6
<i>Texas v. Interstate Commerce Commission</i> , 258 U. S. 158-----	6
<i>Washington v. Northern Securities Co.</i> 185 U. S. 254-----	4

Statutes:	
Constitution:	
Art III, Sec. 2, Clause 1-----	5

Revised Statutes:	
Section 3224-----	3
Section 3226-----	8

Carriers Taxing Act of 1937, C. 405, 50 Stat 435, Secs. 2 (a), 3 (a), and 4-----	8
---	---

Miscellaneous:	
Treasury Regulations 100, Arts. 702 (a) and 702(b)-----	8

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 13, Original

THE STATE OF CALIFORNIA, COMPLAINANT

v.

MURRAY W. LATIMER, JAMES A. DAILEY, AND LEE  
M. EDDY, INDIVIDUALLY AND AS MEMBERS OF THE  
RAILROAD RETIREMENT BOARD, AND GUY T. HEL-  
VERING, INDIVIDUALLY AND AS COMMISSIONER OF  
INTERNAL REVENUE

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MOTION TO DISMISS BILL OF COMPLAINT, MEMORANDUM  
IN SUPPORT OF MOTION TO DISMISS, AND ANSWER TO  
BILL OF COMPLAINT SUBJECT TO MOTION TO DISMISS

---

MOTION TO DISMISS BILL OF COMPLAINT

*To the Chief Justice and the Associate Justices of  
the Supreme Court of the United States:*

Come now the defendants above-named, by the  
Solicitor General, and move that the bill of com-  
plaint herein be dismissed for the reasons that:

A. The individual citizenship of the defendants  
can form no basis for original jurisdiction in this  
Court. Defendants can and will act only as offi-  
cials of the United States; and as officials they are

citizens of no State but have the same relation to one State as to another.

B. The Collector of Internal Revenue for the First District of California and the employees of the State Belt Railroad have not been joined as defendants, and they are indispensable parties in whose absence this Court should not proceed.

C. The cause may not be maintained in this Court, since the Collector of Internal Revenue for the First District of California, a citizen of California, should be made a party, and to join him would deprive this Court of original jurisdiction.

D. The cause may not be maintained in this Court, since the employees of the State Belt Railroad, citizens of California, in whose absence this Court should decline to give equitable relief, should be made parties, and to join any of them would deprive this Court of original jurisdiction in this cause.

E. The bill of complaint is without equity because it appears from the allegations thereof that complainant will suffer no injury, irreparable or even substantial, from any action taken or threatened by the defendants.

F. Complainant has an adequate and complete legal remedy by the payment of the questioned taxes which have accrued under the Carriers Taxing Act of 1937, followed by a claim and a suit for a refund, and by contesting the validity of orders issued under the Railroad Retirement Acts in judicial proceedings provided for in those Acts.

G. The bill of complaint requests this Court to grant relief in contravention of Section 3224 of the Revised Statutes, in that it seeks to obtain an injunction against the collection of a federal tax.

H. This suit is in substance and effect against the United States, which is the real party in interest and hence an indispensable party. It may not be sued without its consent and has not consented to this suit or waived its immunity from suit.

I. Even though it be assumed that the bill of complaint alleges threatened action of the defendants which would afford grounds of equitable relief if such action were unlawful, nevertheless the bill of complaint should be dismissed on the ground that all action alleged to be threatened is wholly lawful.

Wherefore, the defendants pray that the bill of complaint be dismissed, with costs to the defendants.

ROBERT H. JACKSON,  
*Solicitor General.*

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BILL  
OF COMPLAINT**

**STATE OF THE PLEADINGS**

Upon motion by complainant for leave to file its bill of complaint, a rule was issued on April 11, 1938, requiring the defendants to show cause why leave to file the bill of complaint herein should not be granted. Response having been made by the defendants through the Solicitor General, leave to file the bill was granted on May 16, 1938, and process was made returnable on October 3, 1938.

**SUGGESTION AS TO DEFENDANT DAILEY**

As indicated in Article II of the answer to the bill of complaint, filed herewith, the term of office of the defendant Dailey expired on August 29, 1938. No successor has yet been appointed. There is, therefore, no occasion for continuing this suit against the defendant Dailey, and the Court may choose to dismiss the bill as to him irrespective of any action taken as to the other defendants.

**STATEMENT**

The issues raised by the defendants in their response to the rule to show cause were not adjudged against them by the decision of the Court to allow complainant to file its bill of complaint,<sup>1</sup> and the

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<sup>1</sup> *Louisiana v. Texas*, 176 U. S. 1; *Washington v. Northern Securities Co.*, 185 U. S. 254; *Kansas v. United States*, 204 U. S. 331; *Georgia v. Morgenthau*, No. 16, Original, October Term, 1935 (Journal entry for January 20, 1936, ordering motion to dismiss and answer filed and setting argument on motion to dismiss).

same issues may again be presented to the Court by the present motion to dismiss. Therefore, in support of the grounds upon which the motion to dismiss is based, defendants respectfully refer the Court to the brief submitted in this cause on their behalf by the Solicitor General in response to the rule to show cause why leave to file the bill of complaint should not be granted. Additional matters not covered in that brief are briefly discussed herein.

**ARGUMENT**

I

**DEFENDANTS' CITIZENSHIP AFFORDS NO BASIS FOR THE JURISDICTION OF THIS COURT**

Complainant seeks to establish original jurisdiction in this Court by alleging that the individuals named as defendants are citizens of states other than California, in order that this controversy should appear to be one between a state and citizens of another state (Constitution, Article III, Section 2, Clause 1). But defendants can and will act only as officials; and as individuals they clearly have no interest in the Railroad Retirement Acts and the Carriers Taxing Act, as is abundantly illustrated by the futility of continuing this suit for an injunction against the defendant Dailey who, as indicated in Article II of the answer filed herewith, is no longer a member of the Railroad Retirement Board. None of the acts which complainant alleges that defendants have done or will do in the administration of these statutes, would, even if

such statutes are later determined to be inapplicable to complainant, subject defendants to personal tort liability; hence, defendants do not have even that individual interest in sustaining the authority for their conduct which would exist in the case of officers of the government acting under circumstances which would subject them to personal liability in tort for conduct not sustained by lawful authority. That defendants are not involved here in their capacities as citizens of states other than California is demonstrable from the fact that if one of them should resign and his office be filled by a citizen of California, the essential nature of the controversy would remain unaltered and the real parties in interest would remain the same. *Minnesota v. Hitchcock*, 185 U. S. 373, 383-384. The real controversy is whether or not the Railroad Retirement Acts and the Carriers Taxing Act are applicable to the State of California in its operation of the State Belt Railroad, and the real parties in interest are the State and the officials charged by law with the enforcement of those Acts. This Court said in *Texas v. Interstate Commerce Commission*, 258 U. S. 158, 160, that governmental agencies are not citizens of any state but bear the same relation to one state as to another without regard to the citizenship of their personnel on the basis of which Texas asserted jurisdiction in that case. There is manifestly no real distinction between a suit against the Board, such as was involved in *Texas v. Interstate Commerce Commis-*

sion, supra, and the present suit against all of the members of the Board. That complainant itself explicitly recognizes that its suit is in no real sense against the defendants as individuals is shown by the fact that relief is prayed for not only against the defendants but also against their successors in office.

## II.

### THIS SUIT IS PROHIBITED BY SECTION 3224 OF THE REVISED STATUTES

At pages 38-40 of the brief in response to the rule to show cause it is shown that Section 3224 of the Revised Statutes forbids maintenance of this suit. That conclusion is in no manner affected by the recent decision in *Allen v. Regents*, 304 U. S. 439.

This Court in the *Regents* case held that the federal courts could maintain proceedings to enjoin collection of the amount said to be due from the state instrumentality in respect of admissions taxes imposed on those who attended its athletic contests. The opinion seems to have rested the decision on the conclusion that "the assessment is not of a tax payable by respondent but of a penalty for failure to collect it from another" (p. 449). Because "no part of the sum collected was a tax" and "the assessment was in truth the imposition of a penalty for failure to exact a tax on behalf of the United States," the state was held "entitled to have a determination of the question whether such burden is imposed by the statute as construed and applied"

(p. 448). Since there was no clear provision for claims for refund and suits for recovery, and the state "is not bound to subject its public officers and their subordinates to pains and penalties" criminal and civil in order to have this question settled" (p. 448), it could resort to equity. Neither step in the Court's reasoning is applicable here.

1. There can be no contention that the taxes imposed by Sections 2 (a) and 3 (a) of the Carriers Taxing Act of 1937, c 405, 50 Stat. 435, are penalties rather than taxes.

2. There is full provision for orderly determination of complainant's liability for these taxes by payment, claim for refund and suit for recovery. Section 4 of the Carriers Taxing Act provides that "If more \* \* \* than the correct amount of the tax \* \* \* is paid \* \* \* the amount of the overpayment shall be refunded \* \* \* in such manner \* \* \* as may be prescribed by regulations under this Act \* \* \*." Article 702 (a) of Treasury Regulations 100 provides that "If more than the correct amount of tax \* \* \* is paid to the collector \* \* \* the person paying such tax \* \* \* may file a claim for refund \* \* \*." Article 702 (b) makes specific provision for claims filed by an employer for refund of the employees' tax, requiring either a statement that the employee has been repaid or the written consent of the employee. Section 3226 of the Revised Statutes authorizes suits for the recovery of

any internal revenue tax after the Commissioner has denied a claim for refund or has failed to act within six months. Thus, there is a plain and adequate remedy, through the normal procedure of a claim for refund of taxes paid, which complainant may invoke with respect both to its own taxes and to the employee taxes.<sup>2</sup>

### III

#### THE ISSUES PRESENTED BY COMPLAINANT HAVE CLEARLY BEEN DECIDED AGAINST IT BY PREVIOUS DECISIONS OF THIS COURT

At pages 46-50 of the brief in response to the rule to show cause it is shown that previous decisions of this Court have completely disposed of all questions presented by the complaint. To the cases there cited may be added *Helvering v. Gerhardt*, 304 U. S. 405, indicating the narrow room for any claim of immunity against federal taxation, and *Allen v. Regents*, 304 U. S. 439, further clarifying the principle that a business enterprise, even though conducted by a State, cannot share the sovereign immunity against taxation.

WHEREFORE, for the reasons set forth herein and in the brief filed in response to the rule to show

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<sup>2</sup> It is, accordingly, unnecessary to consider the questions as to whether complainant has standing to challenge the employee tax (compare *Helvering v. Davis*, 301 U. S. 619, with the *Regents case*) and whether, if no remedy had been provided for the employee tax, all of complainant's questions could not have been settled by a claim for refund of its own tax.

cause, the defendants respectfully submit that their motion to dismiss the bill of complaint should be granted.

ROBERT H. JACKSON,  
*Solicitor General.*

OCTOBER 1938.

**ANSWER TO BILL OF COMPLAINT**

Come now the defendants in the above-entitled cause, by the Solicitor General, and, without waiving any of their rights and defenses under the motion filed herewith in their behalf to dismiss the bill of complaint, and now and at all times hereafter saving unto themselves all benefits and advantages of objection or exception which can or may be had or taken to the bill of complaint, for answer thereto or to so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, by way of answer respectfully state:

I

The defendants are without knowledge or information sufficient to form a belief concerning any of the allegations contained in Article I of the bill of complaint, except that the defendants admit that the State of California is one of the United States of America.

II

The defendants admit each and every allegation of Article II except the allegations that the defendants Latimer, Dailey, and Eddy are sued

herein individually, and that the defendant Dailey is a member of the Railroad Retirement Board, which allegations defendants deny, and aver that the term of office of the defendant Dailey expired on August 29, 1938.

### III

With respect to the allegations contained in Article III of the bill of complaint, defendants aver that the allegations are conclusions of law, which require no answer herein.

### IV

The defendants admit that the State Belt Railroad has a physical connection with the Southern Pacific Company; that its tracks run onto forty-five wharves used by the Southern Pacific Company, the Atchison, Topeka, and Santa Fe Railway Company, the Northwestern Pacific Railway Company, and the Western Pacific Railway Company; that its tracks connect with freight yards used by the said companies; that in such freight yards all switching is done by the State Belt Railroad; and that each of the said companies is a common carrier engaged in interstate commerce by railroad.

The defendants aver that the State Belt Railroad connects with, does all the switching in, and hauls all cars entering or leaving, certain freight yards used by the four carriers above-mentioned; that it moves all the carload freight and empty cars between numerous industries, wharves, car ferries, yards, and transfer tracks, consigned to or from

points within or without the State of California or both originating in and consigned to points without the State of California; that all the industries, wharves, car ferries, and freight yards above-mentioned are served exclusively by the State Belt Railroad in the movement of cars; that in performing its services the State Belt Railroad makes no distinction between cars owned by railroads operating within the State and cars owned by railroads operating exclusively without the State; that most of the traffic moved by the State Belt Railroad consists of carload shipments originating outside California and shipped to consignees located along its tracks or originating at points along its tracks and consigned to states other than California; that many cars hauled by complainant both originate in and are consigned to points outside California; that a considerable portion of the traffic handled by complainant either originates in or is consigned to foreign countries; that complainant is a link in the through transportation of interstate freight, is a facility of transportation offering its services as a common carrier of interstate traffic, is operated as an integral part of the national transportation system, is a carrier by railroad subject to Part I of the Interstate Commerce Act, and has been held by the Interstate Commerce Commission to be a carrier by railroad subject to Part I of the Interstate Commerce Act.

With respect to the allegation that the State of California in the construction, maintenance, op-

eration, management, and control of the State Belt Railroad, or in any of such activities, is engaged in a usual, traditional, and essential governmental function, defendants aver that such allegation is a conclusion of law not requiring answer herein.

Except as admitted or as differently alleged hereinabove, the defendants are without knowledge or information sufficient to form a belief concerning any of the other allegations of fact contained in Article IV of the bill of complaint.

## V

The defendants aver that the statement in Article V of the bill of complaint that all the powers and duties of the Board of State Harbor Commissioners for San Francisco Harbor are essentially governmental in character and such as are usually and traditionally a part of government functioning is a conclusion of law not requiring answer herein.

The defendants are without knowledge or information sufficient to form a belief concerning any of the other allegations contained in said Article.

## VI

The defendants deny that any of the employees of the State Belt Railroad now are members of the State Employees' Retirement System of the State of California, and deny that at any time since the enactment of the Railroad Retirement Act of 1935 any of them have been such members. The defend-

ants aver that it is unnecessary to answer the other allegations of Article VI of the bill of complaint and respectfully refer the Court to the State Employees' Retirement Law, printed as Exhibit D to the bill of complaint, certain provisions of which are summarized in that Article.

## VII

The defendants admit that if the Carriers Taxing Act of 1937 is applied to the State Belt Railroad the complainant will be under obligation to pay to the internal revenue officers of the United States approximately \$7,862.32 yearly, as and for an income tax on the employees of said railroad, and an excise tax upon the complainant in the approximate amount of \$7,862.32 yearly. The defendants are without knowledge or information sufficient to form a belief concerning any further allegations of fact contained in the paragraph beginning and ending on Page 19 of the bill of complaint. The defendants aver that the complainant would have a right to deduct the amounts which it would pay to the United States as and for an income tax on the employees of the State Belt Railroad from the wages otherwise due to such employees before the payment of such tax, and that the complainant would deduct such amounts.

The defendants aver that it is unnecessary to answer the other allegations contained in Article VII of the bill of complaint, and respectfully refer

the Court to the Railroad Retirement Act of 1937, the Railroad Retirement Act of 1935, and the Carriers Taxing Act of 1937, which those allegations purport to summarize and to characterize.

The defendants aver that the complainant has reported to the Railroad Retirement Board the service and compensation of not less than 180 employees who have rendered compensated service to the complainant between January 1, 1937, and the date when this suit was begun, and each of whom had acquired legally enforceable rights to benefits under the Railroad Retirement Act, all of which rights are placed in issue in this suit. Each such employee is an indispensable party to the determination of the issues involved herein. The defendants further aver that prior to the commencement of this suit not less than sixteen employees and former employees of the complainant had filed claims for annuities with the Railroad Retirement Board, which claims were based in whole or in part upon the rendition of service to the complainant. The legally enforceable rights of each such claimant under such claim are placed in issue in this suit, and each such claimant is an indispensable party to the determination of the issues involved herein. The defendants further aver that many of the employees and claimants hereinbefore referred to are citizens of the complainant state and that their joinder would oust the jurisdiction of this Court.

## VIII

The defendants aver that each of the allegations in Article VIII of the complaint constitutes a conclusion of law which requires no answer herein, except in so far as said Article may be construed to contain an allegation that defendant Helyering has demanded payment of any taxes from complainant, which allegation defendants deny.

## IX

The defendants admit that defendants Latimer, Dailey, and Eddy, purporting to act as members of the Railroad Retirement Board, have notified complainant in writing, as shown by Exhibit A, attached to the bill of complaint, that the Railroad Retirement Act of 1935 and the Railroad Retirement Act of 1937 apply to the State Belt Railroad and to the complainant; and aver that such action of defendants Latimer, Dailey, and Eddy was in response to a request of complainant and was taken by them only in their official capacities as members of the Railroad Retirement Board.

The defendants deny that defendants Latimer, Dailey, and Eddy have, or that any defendant has, threatened to require the complainant to gather or keep records of the employees of complainant on the State Belt Railroad. The defendants aver that the term of office of defendant Dailey expired on August 29, 1938, and deny that defendants Latimer and Eddy or either of them will require com-

plainant to gather or to keep such records otherwise than through the exercise of the power to make orders and to bring judicial proceedings for their enforcement pursuant to Section 10 (b) 4 of the Railroad Retirement Act of 1937, and the defendants aver that the exercise of such power can impinge upon complainant only through the operation of normal judicial processes affording adequate opportunity to challenge the correctness of orders so made. The defendants deny that they or any defendant will enforce against the complainant, its officers, agents, or employees, any penalties, if it refuses to gather and keep such records or under any other circumstances. The defendants aver that the duty of enforcement of penalties under the Railroad Retirement Act of 1935 and the Railroad Retirement Act of 1937 is vested by statute in certain persons other than the defendants, to wit, the Attorney General of the United States and the United States attorneys.

## X

The defendants admit that defendant Helvering, purporting to act as Commissioner of Internal Revenue, has notified complainant in writing, as shown by Exhibit B attached to the bill of complaint, that the Carriers Taxing Act of 1937 applies to the State Belt Railroad and to the complainant; and aver that such action of defendant Helvering was in response to a request of complainant and was taken by him only in his official capacity as Commissioner of Internal Revenue.

The defendants deny each and every allegation contained in the second and third paragraphs of Article X of the bill of complaint. The defendants aver that there are persons other than the defendants invested by statute with duties and functions which constitute an indispensable part of the operation of the Carriers Taxing Act of 1937, to wit, the Collectors of Internal Revenue, who are charged with the collection of the taxes, and the Attorney General of the United States and the United States attorneys, who are charged with the duty of prosecuting violations of the statute.

## XI

The defendants deny that there has been any threatened attempt by defendant Helvering, acting or purporting to act as Commissioner of Internal Revenue, to collect from complainant any taxes imposed by the Carriers Taxing Act of 1937 and aver that the only action taken by defendant Helvering has been as shown by Exhibit B attached to the bill of complaint. Defendants further aver that none of them is charged with the duty of collecting the taxes imposed by the Carriers Taxing Act of 1937, but that the Collector of Internal Revenue for the First District of California is the officer charged with that duty and that the said Collector of Internal Revenue is an indispensable party to the determination of the issues involved herein.

The defendants admit that the Carriers Taxing Act of 1937, if applied to complainant, would im-

pose upon it as an employer an annual excise tax of \$7,862.32. Defendants also admit that complainant could, by paying the said excise tax and by deducting and paying the tax levied upon the income of employees of the State Belt Railroad, avoid any penalties to which complainant or its officers and employees might become subject for refusing to pay the said taxes imposed by the Carriers Taxing Act of 1937. But defendants deny that payment of the said excise tax or deduction and payment of the said income tax would result in irreparable injury to complainant. Defendants aver that complainant has a complete, speedy, and adequate remedy at law in that complainant may pay the said taxes and if it believes them to have been erroneously or illegally exacted or paid may demand of the Commissioner of Internal Revenue that the same be refunded, and if such demand be refused or not passed upon within six months, may, pursuant to statute, bring suit to compel such refund.

The defendants deny the allegation contained in the paragraph beginning on Page 25 of the bill of complaint to the effect that in case complainant should pay the taxes imposed by the Carriers Taxing Act of 1937 and the said Act should later be determined to have no application to it and to its employees, complainant would suffer irreparable loss on account of the multiplicity of claims and suits by the employees of the State Belt Railroad to establish their civil service status under the laws of the State of California and their rights and

privileges under the State Employees' Retirement System. Defendants are without knowledge or information sufficient to form a belief concerning the allegation contained in the paragraph beginning and ending on Page 26 of the bill of complaint to the effect that the amount of the excise tax imposed by the Carriers Taxing Act upon complainant must, if paid, be supplied from charges collected by complainant in the administration of San Francisco Harbor, but defendants deny the allegations of said paragraph to the effect that the charges necessary to supply such amount would be in addition to those now imposed by the Board of State Harbor Commissioners for San Francisco Harbor and to the effect that imposition upon complainant of the excise tax provided for by the Carriers Taxing Act of 1937 would burden commerce in the harbor of San Francisco and would require revision of the tariffs applicable to such commerce. Defendants further deny the allegations of the paragraph beginning and ending on Page 27 of the bill of complaint to the effect that if complainant should deduct or pay over to the United States the tax levied upon the income of its employees, it would be subjected to the harassment and expense of claims and demands and to a multiplicity of suits by its employees to recover the amounts so deducted.

Defendants, for further answer to each of the foregoing allegations referred to in the above paragraph of this answer, aver that under the State Employees' Retirement Law, if complainant is cor-

rect in its assertion that it is not an employer subject to the Railroad Retirement Acts and the Carriers Taxing Act, it is required to pay into the State Employee's Retirement Fund from the San Francisco Harbor improvement fund an amount in excess of the excise tax imposed upon complainant by the Carriers Taxing Act; and is required to deduct from the compensation of the employees of the State Belt Railroad and pay into the State Employees' Retirement Fund an amount in excess of the amount it would be required to deduct from the compensation of such employees and pay to the United States under the Carriers Taxing Act if it is an employer subject to that Act. Defendants aver, therefore, that even if the excise tax levied upon complainant by the Carriers Taxing Act of 1937 must be supplied from charges collected by complainant in the administration of San Francisco harbor, complainant will not be compelled to collect additional charges in order to pay said tax or to revise the tariffs applicable to commerce in said harbor, and that complainant can avoid the several alleged irreparable injuries with respect to the payment of both its excise tax and the tax on the income of its employees by setting aside under the State Employees' Retirement Law the greater amounts required by that law to be set aside, and by paying therefrom the lesser amounts required to be paid to the United States under the Carriers Taxing Act and thereafter pursuing its legal remedy to recover such lesser amounts.

With respect to the allegations contained in the paragraph beginning at the bottom of Page 27 of the bill of complaint to the effect that, under the requirements of the Carriers Taxing Act of 1937 relating to the tax levied upon the income of its employees, complainant would be compelled to set up an account on its books with each of its employees and make deductions and entries, representing the tax, daily, semimonthly, or monthly according to the period "as and when" each employee is paid, defendants aver that they have no knowledge concerning the tenure of complainant's employees, but further aver on information and belief that there is no substantial difference between the records required to be kept by the State Employees' Retirement Law and the records required to be kept by the Carriers Taxing Act, and that complainant could suffer no injury or burden, irreparable or otherwise, by reason of being compelled to keep such records under the Carriers Taxing Act.

The defendants deny that the remedy at law available to complainant will delay for a longer time than the remedy pursued herein the determination of the applicability of the Railroad Retirement Acts and of the Carriers Taxing Act to complainant and to its employees. Defendants aver that the taxes imposed by the Carriers Taxing Act of 1937 for the first three quarters of 1937 became due at approximately the same time that

complainant requested the Commissioner of Internal Revenue to determine the applicability of that Act to the State Belt Railroad; that if complainant had at that time paid the taxes and filed its claim for refund, such claim would, at approximately the time this suit was commenced, have been allowed, disallowed, or not passed upon by the Commissioner of Internal Revenue within six months after such claim was filed; that if disallowed or not passed upon within such period of six months, complainant at that time would have had the right to bring suit for a refund of such taxes; and therefore defendants aver that any delay in the determination of the applicability of the Carriers Taxing Act of 1937 to complainant and its employees has resulted solely from the failure of complainant to pursue its legal remedy expeditiously.

The defendants deny that defendants Latimer, Dailey, and Eddy, or any of them, acting or purporting to act as members of the Railroad Retirement Board, have threatened to require complainant to gather or keep records of its employees on the State Belt Railroad, and aver that the only action of said defendants has been as shown by Exhibit A attached to the bill of complaint. Defendants further aver that the term of office of defendant Dailey expired on August 29, 1938, and that defendants Latimer and Eddy can compel complainant to gather or keep the records required

by the Railroad Retirement Acts only through the exercise of the power to make orders and to bring judicial proceedings for their enforcement pursuant to Section 10 (b) 4 of the Railroad Retirement Act of 1937; and the defendants aver that the exercise of such power can impinge upon complainant only through the operation of normal judicial process affording adequate opportunity to challenge the correctness of the orders. Defendants further aver that they have no power to enforce against complainant, its officers, or employees any penalties for refusal to gather or keep such records as may be required under the Railroad Retirement Acts, and that the duty of enforcing penalties under the said Acts is vested by law in certain persons other than the said defendants, to wit, the Attorney General and the United States attorneys. For further answer to the allegations of the bill in this regard defendants aver that the burden and expense upon complainant of obtaining, keeping, and supplying data to the Railroad Retirement Board under the Railroad Retirement Acts would be negligible in that the reporting of service rendered prior to January 1, 1937, involves simply transcription from records which complainant has long been required to maintain and that the regulations of the Railroad Retirement Board with respect to the reporting of current service and compensation are so designed as to permit ready transcription from payrolls.

The defendants aver that the allegation contained in Article XI to the effect that complainant in the administration of San Francisco harbor is engaged in an essential, usual, and traditional governmental function constitutes a conclusion of law requiring no answer herein. As to the allegations of fact in Article XI not specifically denied hereinabove, defendants deny each and every such allegation except as they have hereinabove admitted, qualified, or realleged such allegations.

The defendants aver that by reason of the foregoing facts complainant has had and now has a speedy and adequate remedy at law for contesting, and for securing a determination of, the applicability to it and to its employees of the Railroad Retirement Acts and of the Carriers Taxing Act and that, therefore, this cause is not cognizable in equity.

WHEREFORE, having fully answered the bill of complaint herein, defendants jointly and severally pray that the bill of complaint be dismissed, and that they recover against complainant their costs herein expended.

ROBERT H. JACKSON,  
*Solicitor General.*